

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 SOE-02 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 DOE-15 H-01 INR-10 INT-05
L-03 NSAE-00 NSC-05 OMB-01 PM-05 USIA-06 OES-07
SP-02 SS-15 STR-07 TRSE-00 ACDA-12 PA-01 /134 W
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R 201120Z MAR 78
FM AMEMBASSY ABU DHABI
TO SECSTATE WASHDC 7538
INFO AMEMBASSY DOHA
AMEMBASSY JIDDA
AMEMBASSY KUWAIT
AMEMBASSY LONDON
AMEMBASSY MUSCAT
AMEMBASSY TEHRAN

C O N F I D E N T I A L ABU DHABI 0749

E.O. 11652: XGDS-1
TAGS: ENRG, EINV, TC, IR
SUBJECT: TAX AND ROYALTY PROBLEM FOR CRESCENT PETROLEUM

REFS: (A) ABU DHABI 544, (B) ABU DHABI 545

BEGIN SUMMARY: CRESCENT PETROLEUM PLANS TO REQUEST
INTERNATIONAL ARBITRATION SINCE IT CONSIDERS THAT NEW
TAX AND ROYALTY TERMS REQUESTED BY SHARJAH AT NIOC'S BHEST
ARE TANTAMOUNT TO CONFISCATION. END SUMMARY

1. MANAGING DIRECTOR OF CRESCENT PETROLEUM, HAMID JAAFAR,
CALLED ON ME MARCH 19 TO REPORT ON RESULTS OF HIS RECENT
VISIT TO U.S. TO CONSULT SHAREHOLDERS ON RESPONSE TO RULER OF
SHARJAH LETTER TO CRESCENT APPLYING HIGHER TAX AND ROYALTY
RETROACTIVE TO JUNE 1976. JAAFAR SAID THAT HE AND LAWYERS
NORTHCUT ELY AND A MR. MIEKLE HAD MET WITH NEA/ARP IN
WASHINGTON ON MARCH 6 (NO REPORT SEEN OF THIS
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MEETING). THEY HAD THEN TRAVELLED TO HOUSTON
FOR MEETING ON MARCH 7 OF CRESCENT PETROLEUM'S
OPERATING COMMITTEE.

2. AT OPERATING COMMITTEE MEETING, JAAFAR SAID THERE
WERE TWO MAIN ISSUES. ONE WAS WHETHER CRESCENT SHOULD
CONTINUE WITH OFFSHORE DRILLING OPERATIONS OF NEW

WELL SOUTH OF PRESENT STRUCTURE (SEE EMBASSY'S A-8). THERE WAS STRONG FEELING AMONG SHAREHOLDERS THAT DRILLING SHOULD STOP IMMEDIATELY TO AVOID THROWING GOOD MONEY AFTER BAD. JAAFAR HAD ARGUED AGAINST TAKING THIS STEP. TO DO SO WOULD BE SEEN BY THE RULER OF SHARJAH AS A CONFRONTATION MOVE BY CRESCENT AND MAKE A RELATIVELY UNIMPORTANT SIDE ISSUE INTO A MAJOR ISSUE BETWEEN CRESCENT AND SHARJAH AUTHORITIES. JAAFAR SAID THAT DRILLING WAS MAKING GOOD PROGRESS AND WAS NOW AT 11,000 FEET WITH ANOTHER 1,500 FEET TO GO. DRILLING OPERATIONS THUS FAR WERE STILL WELL BELOW \$6 MILLION BUDGETED FOR THIS WELL. OPERATING COMMITTEE HAD FINALLY AGREED TO CONTINUE DRILLING ON PROVISIO THAT OPERATION DOES NOT RUN INTO MAJOR TECHNICAL PROBLEMS THAT WOULD INCREASE COSTS.

3. SECOND ISSUE WAS RESPONSE TO FEB 25 LETTER FROM RULER OF SHARJAH. CRESCENT LAWYERS FELT THAT CONTRACT DID NOT ALLOW FOR EITHER PARTY TO DECIDE UNILATERALLY TO CHANGE TERMS OF CONTRACT AND IT WAS THEREFORE UNLAWFUL TO CHANGE TERMS UNILATERALLY. BASED ON STUDY OF LIBYAN ARBITRATION FOR AMERICAN-OWNED COMPANIES, LAWYERS FELT THIS PRECEDENT COULD BE USEFUL IN CRESCENT'S CASE. SHAREHOLDERS HAD CONCLUDED THAT APPLICATION OF RETROACTIVITY UNDER TERMS OF FEB 25 LETTER WAS TANTAMOUNT TO CONFISCATION

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AND WAS WORSE THAN IF THE COMPANY WERE NATIONALIZED. THEY BELIEVED RULER OF SHARJAH HAD BEEN MISLED BY NIOC, WHICH HAD PRESSED FOR THESE HARSH TERMS, AND THAT RULER MIGHT WELL DECIDE THAT INTERNATIONAL ARBITRATION WOULD BE PREFERABLE TO GET HIMSELF OUT OF THE MIDDLE. SHAREHOLDERS HAD THUS DECIDED THAT THERE WAS NO ALTERNATIVE BUT TO SEEK ARBITRATION UNDER ARTICLE 34 OF ORIGINAL DEC 29, 1969 AGREEMENT BETWEEN BUTTES OIL AND SHARJAH GOVERNMENT.

4. ARTICLE 34 PROVIDES FOR THE REQUESTING SIDE, IN EVENT OF A DISPUTE, TO NOMINATE AN ARBITRATOR. DEFENDANT SIDE IS THEN ASKED TO NOMINATE AN ARBITRATOR AND TWO ARBITRATORS MUST NOMINATE A REFEREE WITHIN SIXTY DAYS. IF DEFENDANT REFUSES TO NOMINATE ARBITRATOR, THEN REQUESTING SIDE ASKS THAT ARBITRATOR BE DESIGNATED BY PRESIDENT OF INTERNATIONAL COURT OF JUSTICE. SIMILARLY, IF TWO ARBITRATORS CANNOT AGREE ON REFEREE, PRESIDENT OF ICJ WILL BE ASKED TO NAME REFEREE, AND BOTH PARTIES MUST ACCEPT ANY NOMINATION BY PRESIDENT OF ICJ. JAAFAR SAID RESPONSE TO LETTER TO RULER OF SHARJAH, WOULD INDICATE THAT

CRESCENT WAS INVOKING ARTICLE 34 AND IDENTIFY WHO
CRESCENT PLANNED TO NOMINATE AS ITS ARBITRATOR.
WHILE SEEKING ARBITRATION, CRESCENT'S RESPONSE WOULD
ALSO EMPHASIZE THAT COMPANY WOULD ALWAYS BE OPEN TO
NEGOTIATIONS.

5. RESPONSE IS EXPECTED TO BE BELIVERED BEFORE END
OF MARCH AND COPY PRESUMABLY WILL BE FURNISHED TO
DEPARTMENT. CRESCENT WANTS TO DECLARE THAT DISPUTE
EXISTS BEFORE NEXT TAX AND ROYALTY PAYMENTS WHICH
ARE DUE IN EARLY APRIL.

6. COMMENT: BELIEVE IT UNFORTUNATE THAT DEPARTMENT
UNWILLING INSTRUCT EMBASSY TEHRAN TO POINT OUT TO
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NIOC THAT APPLICATION OF STRINGENT RETROACTIVE PAYMENTS
ON CRESCENT WOULD ONLY PUT COMPANY TO WALL OR TO
ASK BASIS FOR NIOC'S BELIEF THAT CRESCENT CAPABLE OF
MAKING LARGE RETROACITVE PAYMENT.
DICKMAN

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